

Clearances

21 July 78

OLC 78-2165/2

SUBJECT: Arguments To Use With Senator Robert Morgan
(D., N. Car.) On Personal Staffer Clearance Issue

1. Senator Robert Morgan might take another look at all of Section 705.(c)(1) of S. Res. 4 (copy attached). Section 705.(c)(1) states that an employee who is certified by a Senator as his appointee under the resolution, has all the privileges of a professional staff member, including access to "all Committee sessions and files." However, it goes on to state that the Committee may require that if classified information is being handled or discussed, a staff member possess the appropriate security clearance before being allowed access to such material or to discussion of it.

To date, we have not been directed/requested by the Committee to initiate compartmented clearances for this individual. This section makes it clear that it is the Committee not the individual Senator which makes the determination about what security clearances will be appropriate for a staff member to possess.

When we talked to Frank Sullivan about this back in June, he said the Committee did not plan to change their position, i.e., that only regular Committee staff should get compartmented clearances. I don't feel confident that the policy will hold up if Senator Morgan and/or others take their case to Chairman John C. Stennis. The question is can he afford to turn them down?

2. Senator Morgan's interpretation of "need to know" is faulty also. Paragraph four of DCID 1/14 states "The granting of access to special compartmented clearances shall be controlled under the strictest application of the "need to know" principle. This means that an individual should not be granted access because of a position, but only because of a function (i.e., a staffer isn't authorized access first because his principal has access). It can be argued that it is the Committee and staff, not a personal representative, which has the functional necessity for access.

He incorrectly linked his "need to know" with that of his personal staffer. We don't question his "need to know" at all. Although technically as an elected official, he is specifically exempted from DCID 1/14, including the "need to know" principal. But the application of that principal to his personal staffer is a separate matter.

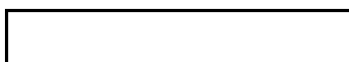
3. The Senator should also be aware of the implications of his request. If one Senator's staff can be cleared for access to compartmented information, then all 100 Senators can expect the same privilege. If this were to be granted, then Senators would request clearances for personal staffers working on such intelligence related areas as SALT, terrorism, etc. Inevitably, the number of requests for these special accesses would mushroom. The President has tasked you with putting a stop to the proliferation of compartmented clearances. In order to carry this out, you must remain firm in your position that only regular permanent Committee staff receive compartmented clearances. The Senate leadership has recently recognized this principle in a letter to you. Should Senator Morgan acquaint leadership with his request, they will have to tell him about the position they have recently taken on this issue. Our support from this quarter may not be as firm as we would wish it to be.

In summary, if you are to make your position stick, you will have to do that on your own, based primarily on the non-proliferation argument.

Attachment:
As stated

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1 in his duties as a member of such committee or subcommittee
2 thereof as the case may be, or (B) the amount referred to in
3 section 105 (e) (1) of the Legislative Branch Appropriation
4 Act, 1968, as amended and modified, whichever is less.

5 (c) (1) An employee appointed under this section shall be
6 designated as such and certified by the Senator who appoints
7 him to the chairman and ranking minority member of the com-
8 mittee designated by such Senator and shall be accorded all
9 privileges of a professional staff member (whether permanent
10 or investigatory) of such committee including access to all com-
11 mittee sessions and files, except that any such committee may
12 restrict access to its sessions to one staff member per Senator at
13 a time and require, if classified material is being handled or dis-
14 cussed, that any staff member possess the appropriate security
15 clearance before being allowed access to such material or to dis-
16 cussion of it.

17 (2) If (A) a Senator's service on a committee terminates
18 (other than by reason of his ceasing to be a Member of the
19 Senate) or a Senator's status on a committee as the chairman
20 or ranking minority member of such committee or a subcom-
21 mittee thereof changes, and (B) the appointment of an em-
22 ployee appointed under this section and designated to such com-
23 mittee by such Senator would (but for this paragraph) thereby
24 terminate, such employee shall, subject to the provisions of sub-
25 section (e), be continued as an employee appointed by such

Ante, p. 82.
2 USC 61h-6.

Effective date.
2 USC 61h-6
note.
2 USC 61-1 note.

SEC. 110. (a) Section 101 of the Supplemental Appropriations Act, 1977, is amended—

(1) by striking out "Majority Leader of the Senate and the Minority Leader of the Senate" in the first sentence and inserting in lieu thereof "Majority Leader, Minority Leader, and Secretary of the Senate"; and

(2) by striking out "Majority Leader and the Minority Leader" in the last sentence and inserting in lieu thereof "Majority Leader, Minority Leader, and Secretary of the Senate".

(b) The amendments made by subsection (a) shall take effect on August 1, 1977.

SEC. 111. (a) Except as provided in subsection (b), the aggregate of the gross compensation which may be paid to employees in the office of a Senator during each fiscal year under section 105(d) of the Legislative Branch Appropriation Act, 1968, as amended and modified (2 U.S.C. 61-1(d)), is increased by an amount equal to three times the amount referred to in section 105(e)(1) of such Act, as amended and modified.

(b)(1) In the case of a Senator who is the chairman or ranking minority member of any committee, or of any subcommittee that receives funding to employ staff assistance separately from the funding authority for staff of the full committee, the amount referred to in subsection (a) shall be reduced by the amount referred to in section 105(e)(1) of the Legislative Branch Appropriation Act, 1968, as amended and modified, for each such committee or subcommittee.

(2) In the case of a Senator who is authorized by a committee, a subcommittee thereof, or the chairman of a committee or subcommittee, as appropriate, to recommend or approve the appointment to the staff of such committee or subcommittee of one or more individuals for the purpose of assisting such Senator solely and directly in his duties as a member of such committee or subcommittee, the amount referred to in subsection (a) shall be reduced, for each such committee or subcommittee, by an amount equal to (A) the aggregate annual gross rates of compensation of all staff employees of that committee or subcommittee (i) whose appointment is made, approved, or recommended and (ii) whose continued employment is not disapproved by such Senator, if such employees are employed for the purpose of assisting such Senator solely and directly in his duties as a member of such committee or subcommittee thereof as the case may be, or (B) the amount referred to in section 105(e)(1) of the Legislative Branch Appropriation Act, 1968, as amended and modified, whichever is less.

(3) In the case of a Senator who is serving on more than three committees, one of the committees on which he is serving, as selected by him, shall not be taken into account for purposes of paragraphs (1) and (2). Any such Senator shall notify the Secretary of the Senate of the committee selected by him under this paragraph.

2 USC 72a-1e.

(c)(1) A Senator may designate employees in his office to assist him in connection with his membership on committees of the Senate. An employee may be designated with respect to only one committee.

(2) An employee designated by a Senator under this subsection shall be certified by him to the chairman and ranking minority member of the committee with respect to which such designation is made. Such employee shall be accorded all privileges of a professional staff member (whether permanent or investigatory) of such committee including access to all committee sessions and files, except that any such committee may restrict access to its sessions to one staff member per Senator at a time and require, if classified material is being

handled or discussed, that any staff member possess the appropriate security clearance before being allowed access to such material or to discussion of it. Nothing contained in this paragraph shall be construed to prohibit a committee from adopting policies and practices with respect to the application of this subsection which are similar to the policies and practices adopted with respect to the application of section 105(c)(1) of Senate Resolution 4, 95th Congress, and section 106(c)(1) of the Supplemental Appropriations Act, 1977.

Infra.

(3) A Senator shall notify the chairman and ranking minority member of a committee whenever a designation of an employee under this subsection with respect to such committee is terminated.

(d) The second sentence of section 105(d)(2) of the Legislative Branch Appropriation Act, 1968, as amended and modified, is amended—

2 USC 61-1.

(1) by inserting after "(i)" the following: "the salaries of three employees may be fixed at rates of not more than the rate referred to in subsection (e)(1), (ii)"; and

(2) by striking out "(ii)" and inserting in lieu thereof "(iii)". The amendments made by this subsection shall have no effect on section 6(c) of the Order of the President pro tempore issued on October 8, 1976, under section 4 of the Federal Pay Comparability Act of 1970.

2 USC 61-1 note.

2 USC 60a-1.

(e)(1) Section 106 of the Supplemental Appropriations Act, 1977 (other than subsection (f) thereof) is repealed.

Repeal.
2 USC 72a-1d
and notes.

(2) As an exercise of the rulemaking power of the Senate, section 705 of Senate Resolution 4, 95th Congress (other than subsection (h) thereof) is repealed.

(f) This section, and the amendments made by subsection (d) and the repeals made by subsection (e), shall take effect on October 1, 1977.

Effective date.
2 USC 72a-1e
note.

Sec. 112. (a) Section 506(a) of the Supplemental Appropriations Act, 1973 (2 U.S.C. 58(a)) is amended—

(1) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) official telegrams and long-distance telephone calls and related services;"

(2) by striking out "and" at the end of paragraph (7) and by striking out paragraph (8) and inserting in lieu thereof the following:

"(8) subject to the provisions of subsection (e), reimbursement of travel expenses incurred by the Senator and employees in his office; and

"(9) reimbursement to each Senator for such other official expenses as the Senator determines are necessary (not including official office expenses incurred in his State, but including actual transportation expenses incurred by the Senator and employees in his office in the performance of official business in the metropolitan area of Washington, District of Columbia, or, in the case of employees assigned to an office of the Senator in his home State, incurred by such employees in the performance of official business in the general vicinity of the office to which assigned), but only to the extent such expenses do not exceed for any calendar year ten percent of the total amount of expenses authorized to be paid to or on behalf of such Senator under this section for such calendar year."; and

(3) by striking out the last sentence thereof and inserting in lieu thereof the following: "Reimbursement to a Senator and his employees under this section shall be made only upon presentation